Senate Bill No. 29

CHAPTER 11

An act to add and repeal Chapter 7 (commencing with Section 16910) to Part 3 of Division 4 of Title 2 of the Government Code, relating to public pension obligations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 5, 2003. Filed with Secretary of State May 5, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 29, Committee on Budget and Fiscal Review. Public pension obligations: bond financing.

Under existing law, the state is required to make specified contributions to the Public Employees' Retirement Fund, the Teachers' Retirement Fund, and other public retirement funds.

This bill would enact the California Pension Obligation Financing Act, that would authorize the issuance of bonds and the creation of ancillary obligations, as defined, for the purpose of funding or refunding the state's pension obligations, as specified. The bill would continuously appropriate from the General Fund without regard to fiscal years the amount necessary to pay the principal and interest on the bonds and other obligations incurred in connection with the bonds, subject to certain limits. The bill would also authorize the Pension Obligation Bond Committee, as established by the bill, to bring an action to determine the validity of the bonds issued pursuant to the act. The act would become inoperative on June 30, 2009, and would be repealed on January 1, 2010.

This bill would provide that it would become operative only if SB 25, SB 26, SB 20, and SB 28 of the 2003–04 First Extraordinary Session are all chaptered and become effective on or before January 1, 2004.

The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 7 (commencing with Section 16910) is added to Part 3 of Division 4 of Title 2 of the Government Code, to read:

Chapter 7. The California Pension Obligation Financing Act

Article 1. General Provisions

16910. This chapter shall be known and may be cited as the California Pension Obligation Financing Act.

16911. It is the intent of the Legislature, in enacting this chapter, to provide for an efficient, equitable, and economical means of satisfying pension obligations of the state.

16912. The Legislature hereby finds and declares that the state's obligations to make payments to certain public retirement systems are obligations imposed by law not subject to Section 1 of Article XVI of the California Constitution and the bonds authorized to be issued under this chapter have the same character under the Constitution as the pension obligations funded or refunded.

16913. Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) ''Ancillary obligation'' means the obligation of the state under any credit enhancement or liquidity agreement, including any obligation (1) in the form of bond insurance, a letter of credit, standby bond purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement, or (2) under any remarketing agreement, auction agent agreement, broker-dealer agreement, or other agreement relating to the marketing of the bonds, interest rate or other type of swap or hedging contract, or (3) under any investment agreement, forward purchase agreement, or similar structured investment contract, entered into by the committee in connection with any bonds issued under this chapter.

(b) ''Bonds'' means any bonds, notes, bond anticipation notes, interim certificates, debentures, or other obligations or forms of indebtedness issued pursuant to this chapter.

(c) ''Committee'' means the Pension Obligation Bond Committee created pursuant to Section 16920.

(d) ''Pension obligations'' means the obligations of the state or any state agency to the retirement systems imposed by the retirement laws in the amounts determined by the governing boards of the retirement systems.

(e) ''Program'' means the program established by this chapter under which the committee shall issue bonds for the purpose of funding or refunding pension obligations.

(f) ''Retirement laws'' means Section 17 of Article XVI of the California Constitution, the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2), the

Teachers' Retirement Law (Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) of Division 1 of Title 1 of the Education Code) and any other laws providing for payment to be made by the state or any state agency to any retirement system to provide retirement benefits to employees of the state or any other individuals for which the state has an obligation to pay all or a portion of the contributions to a retirement system to ensure the payment of retirement benefits to those individuals.

(g) ''Retirement systems'' means the Public Employees' Retirement System established pursuant to the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2) and the State Teachers' Retirement System established pursuant to the Teachers' Retirement Law (Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) of Division 1 of Title 1 of the Education Code) and any other retirement system that provides retirement benefits to employees of the state or any other individuals for which the state has an obligation to pay all or a portion of the contributions to the retirement system to ensure the payment of retirement benefits to those individuals.

Article 2. Issuance of Bonds to Finance the Program

16920. (a) Solely for the purpose of the issuance and sale of the bonds and ancillary obligations authorized by this chapter, the Pension Obligation Bond Committee is hereby created. The committee consists of the Governor or his or her designee, the Director of Finance, the Controller, the Treasurer, the Secretary of the Business, Transportation and Housing Agency, the Director of General Services, and the Director of Transportation. Notwithstanding Section 7.5 or other provisions of law, any member may designate a deputy to act as the member in his or her place and stead for all purposes, as though the member were personally present. The Legislature hereby finds and declares that each member of the committee has previously acted as a member of a similar finance committee, and has duties in relation to the payment of pension obligations relating to employees under supervision of the member.

(b) A majority of the committee shall constitute a quorum of the committee and may act for the committee. The Director of Finance shall serve as chairperson of the committee.

(c) No member, officer, or agent of the committee is subject to personal liability on any bonds or ancillary obligations or other obligations issued or entered into under this chapter or for any acts or omissions of members, officers, or agents in carrying out the powers and duties conferred by this chapter.

16921. The committee is authorized and empowered, for and in the name and on behalf of the state, to do all of the following:

(a) Issue taxable or tax-exempt bonds for the purpose of funding or refunding pension obligations, paying related costs and ancillary obligations, or refunding any bonds previously issued pursuant to this chapter.

(b) Execute debentures or other instruments evidencing the pension obligations.

(c) Enter into ancillary obligations and other contracts deemed necessary by the committee in connection with any bonds issued under this chapter.

(d) Establish the terms and conditions for the program undertaken pursuant to this chapter.

(e) Employ or contract for legal, consulting, underwriting, or other services in connection with the program as may be necessary in the judgment of the committee, as approved by the Treasurer, as agent for sale of the bonds, for the successful financing of the program and the issuance and sale of bonds.

(f) In addition to the powers specifically granted in this chapter, do all things necessary or convenient, including delegation of necessary duties to the Director of Finance, as chairperson, and to the Treasurer, as agent for sale of the bonds, to carry out the purposes of this chapter.

16922. The committee, at any time or from time to time, upon the request of the Director of Finance, may issue bonds, for and in the name and on behalf of the state, for the purpose of financing or refinancing the program as authorized by this chapter. Bonds for the purpose of financing the program as authorized by this chapter may not be issued after June 30, 2004. However, bonds issued pursuant to this section may be refunded pursuant to Section 16923 whether the date of refunding occurs before, on, or after June 30, 2004. Every issue of bonds, and any ancillary obligation entered into with respect to those bonds, shall be a debt and liability of the state payable from the General Fund of the state or, in the case of bond anticipation notes, payable from the proceeds of bonds to be issued pursuant to this chapter, subject only to the prior application of moneys in the General Fund for (a) support of the public school system and public institutions of higher education, (b) payment of debt service on state general obligation bonds and commercial paper notes, (c) reimbursement of state special funds, to the extent required by law, for internal borrowings, and (d) payment of debt service on state revenue anticipation notes or registered reimbursement warrants.

16923. (a) The resolution, certificate, or other instrument of the committee authorizing the issuance of the bonds may provide, or the committee may delegate to the Treasurer, as agent for sale of the bonds, responsibility to determine, any or all of the following for the bonds:

(1) The form of the bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination of those.

(2) The date to be borne by any bonds.

(3) The time of maturity of any bonds, which maturities may be before or after the term of the related pension obligation to be funded or refunded, provided that the time of maturity of any bonds does not exceed five years.

(4) The interest, fixed or variable, to be borne by the bonds.

(5) The time that the bonds shall be payable.

(6) The denominations, form, and registration privileges of the bonds.

(7) The manner of execution of the bonds.

(8) The place the bonds are payable, which may include any paying agent within or outside of the state.

(9) The terms of redemption of the bonds.

(10) The establishment of funds and accounts to be held by a trustee to provide for payment or security for the bonds or ancillary obligations or related costs.

(11) Any other terms and conditions deemed necessary by the committee.

(b) Pursuant to Section 5702, the Treasurer shall serve as agent for the offer and sale of the bonds. The bonds may be sold at either a competitive or negotiated sale, at times and at prices, for consideration, and with all other terms and conditions as the Treasurer, in his or her capacity as agent for sale of the bonds, shall determine.

(c) The Treasurer is authorized to invest or direct the investment of any amounts held in trust for payment of the bonds in any securities or obligations authorized pursuant to Chapter 3 (commencing with Section 16430), as amended from time to time.

16924. The proceeds of the bonds shall be applied to the funding or refunding of pension obligations, or refunding of bonds previously issued under this chapter, together with all costs of issuing the bonds and refunding pension obligations or prior bonds and the costs of any ancillary obligation. Notwithstanding Sections 20822 and 20824 of this code, Section 22955 of the Education Code, or any other provision of law, the proceeds of the bonds may be applied to the prepayment of pension obligations.

16925. If proceeds of bonds issued pursuant to this chapter are used to pay the state's pension obligations to the Public Employees' Retirement System for members whose compensation is paid from a fund other than the General Fund and notwithstanding any other provision of law, the Controller shall transfer quarterly from the special fund or nongovernmental cost fund to the General Fund an amount equal to the quarterly pension obligations paid from bond proceeds with respect to those members, as certified by the Director of Finance and authorized in any appropriation item or in any category thereof.

16926. If proceeds of bonds issued pursuant to this chapter are used to pay the state's pension obligations to the Public Employees' Retirement System for members whose compensation is paid from the General Fund and notwithstanding any other provision of law, the Controller shall abate quarterly to the General Fund an amount equal to the quarterly pension obligations paid from bond proceeds with respect to those members, as certified by the Director of Finance and authorized in any General Fund appropriation item or in any category thereof.

16927. In the discretion of the committee, any bonds issued under this chapter may be secured by a trust agreement, indenture, or resolution between the state and any trustee, which may be the Treasurer or any trust company or bank having the powers of a trust company chartered under the laws of any state or the United States and designated by the Treasurer. The trust agreement, indenture, or resolution may contain provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and not in violation of law. Any trust agreement, indenture, or resolution may set forth the rights and remedies of the bond owners and of the trustee and may restrict the individual right of action by bond owners. In addition to the foregoing, any trust agreement, indenture, or resolution may contain other provisions as the committee may deem reasonable for the security of the bond owners, including, but not limited to, provisions specifying the date or dates on which debt service payments on the bonds shall be transferred to the trustee. Any trust accounts created by the trust agreement, indenture, or resolution may be held outside the State Treasury.

16928. The committee may provide for the issuance of bonds any portion of which is to be used for the purpose of refunding outstanding bonds issued to fund or refund pension obligations, including the payment of the principal thereof and interest and redemption premiums, if any. The date of maturity of bonds issued to refund any outstanding bonds may not exceed the date of maturity of the outstanding bonds they refund. The proceeds of bonds issued to refund any outstanding bonds may be applied to the retirement of those outstanding bonds at maturity, or the redemption, on any redemption date, or purchase of those outstanding bonds prior to maturity, subject to the terms and conditions as the committee deems advisable.

16929. There is hereby created in the State Treasury the Pension Obligation Bond Fund. The net proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Pension Obligation Bond Fund. Notwithstanding Section 13340, the Pension Obligation Bond Fund is hereby continuously appropriated for the purposes specified in this chapter.

Article 3. Miscellaneous Provisions

16930. This chapter, being necessary for the health, welfare, and safety of the state and its residents, shall be liberally construed to effect its purposes.

16931. This chapter shall be deemed to provide a complete and alternative authorization to take the actions necessary to implement this chapter, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of the bonds and their terms, the application of proceeds to the funding or refunding of pension obligations or prior bonds, and the entering into of any ancillary obligation under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds or ancillary obligations, including, but not limited to, the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720)). The purposes authorized by this chapter may be effectuated and bonds are authorized to be issued for any purposes under this chapter notwithstanding that any other law may provide for those purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

16932. Section 10295 of the Public Contract Code and Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code do not apply to agreements entered into by the committee, or any individual to whom the committee delegates contracting authority, in connection with the sale of bonds or other matters authorized under this chapter.

16933. Bonds issued pursuant to this chapter are a legal investment for any state special fund or trust fund, notwithstanding any provision of law limiting the investments that may be made by the fund. The bonds shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, savings banks and savings associations, investment companies, and other persons carrying on banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds may be used by any private financial institution, person, or association as security for public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is authorized by law, including deposits to secure public funds.

16934. The committee may bring an action to determine the validity of any bonds to be issued, or any ancillary obligations and other contracts to be entered into, under this chapter pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. For the purposes of Section 860 of the Code of Civil Procedure, any action initiated pursuant to this section shall be brought in the Superior Court of the County of Sacramento.

16935. This chapter shall become inoperative on June 30, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the General Fund for the purposes of this act, an amount, subject to the limitations of this section, that equals the sum annually that is necessary to pay all obligations, including principal, interest, costs, expenses, rebate, legal, commitment, or other fees, and all other amounts, incurred by the state under or in connection with the bonds and any ancillary obligations entered into by the state pursuant to this act for the purpose of paying or refunding pension obligations payable in the 2003–04 fiscal year. The amount hereby appropriated each fiscal year to pay principal on the bonds and any ancillary obligations may not exceed the outstanding principal amount of the bonds. The amount hereby appropriated each fiscal year to pay interest on the bonds and any ancillary obligations may not exceed 15 percent per annum of the outstanding principal amount of the bonds. The amount hereby appropriated each fiscal year to pay costs, expenses, rebate, legal, commitment, or other fees and other amounts of any ancillary obligations may not exceed 5 percent per annum of the authorized original principal amount of the bonds to which the ancillary obligations relate. Expenditures pursuant to this section shall reflect the best efforts of the state to secure financing that results in the least cost to the state after considering both short-term and long-term financing costs.

SEC. 3. This act shall become operative only if Senate Bill 24, Senate Bill 25, Senate Bill 26, Senate Bill 20, and Senate Bill 28 of the

2003–04 First Extraordinary Session are all chaptered and become effective on or before January 1, 2004.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity will not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the state may satisfy pension obligations of the state that might otherwise go unsatisfied due to the lack of state revenues, it is necessary that this act take effect immediately.

O